REMARKS

Entry of this response and reconsideration and allowance of the above-identified patent application are respectfully requested. Claims 1-23 were rejected in the office action. Claims 1, 9 and 13 have been amended. No claims have been added or canceled. Therefore, following entry of the present response, claims 1-23 will remain pending in the present application.

This application claims priority under 35 U.S.C. § 119(e) from provisional application no. 60/171,519, filed December 22, 1999. Examiner is respectfully requested to acknowledge priority under 35 U.S.C. § 119(e) in the next communication.

Formal drawings were filed with the application on January 21, 2004. Examiner is respectfully requested to acknowledge receipt and acceptance of the drawings as formal.

Claims 1, 13-16 and 22 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 5, 6 and 8 of U.S. Patent No. 6,698,885.

A Terminal Disclaimer is being submitted herewith disclaiming the terminal part of the statutory term of any patent granted on the instant application that would extend beyond the expiration date of the full statutory term, as shortened by any terminal disclaimer, of U.S. Patent No. 6,698,885. Therefore, the obviousness-type double patenting rejection has been obviated, and applicants respectfully request withdrawal thereof.

Claims 1-23 stand rejected under 35 U.S.C. 103 (a) as being unpatentable over U.S. Patent 6,379,006 to Eikelboom *et al.* ("Eikelboom") in view of U.S. Patent 5,867,170 to Peterson ("Peterson"). In particular, the office action contends that Eikelboom teaches "converting an acquired image into an interlaced image" and that "Peterson teaches

combining two digital images into a superimposed image." (*Office Action dated January 11, 2005* at p. 3). The office action further contends that "[o]ne of ordinary skill in the art would have found it obvious to use the image combining teaching of Peterson to provide a superimposed image instead of an interlace[d] image with the Eikelboom device because toggling of alternate frames to create a stereo pair provides an equivalent digital image file 1A and lB as shown in Peterson." (*Id.*) With all due respect to the contentions in the office action, applicants respectfully disagree.

The presently claimed invention provides a technique for judging changes in the components of an eye. In particular, an embodiment of the present invention includes, *inter alia*, superimposing two digital images of the components of the eye. At least one of the digital images is processed so that they images may be compared. For example, one of the digital images may be registered, warped and/or aligned to facilitate comparison with the other digital image. In this way, distinct images of the eye, perhaps taken at various intervals in a patient's lifetime using different equipment, may be compared to detect any changes in the eye indicative of disease. By processing the image, the embodiment of the present invention permits subsequent comparison of the eye regardless of the different circumstances of each image, for example different magnification and perspective.

Neither Eikelboom nor Peterson teach such processing or comparison of the images. The office action suggests that Eikelboom teaches "converting an acquired image" and that Peterson teaches "combining two digital images into a superimposed image." (*Office Action dated January 11, 2005* at p. 3). However, neither reference teaches either comparing the superimposed image or processing an image. In fact, the office action itself does not suggest that either reference teaches the comparing or processing.

Eikelboom simply discusses acquiring a digital image of an eye using an ophthalmoscope. There is no discussion in Eikelboom, nor does the office action suggest discussion, of capturing a second image and conducting processing on one of the images to facilitate comparison.

Peterson provides a graphic arts design technique used in magazines and books that creates more "vivid colors as well as a three dimensional appearance" using color positive images and color negative images. In other words, Peterson's technique is used for aesthetic purposes to achieve an artistic effect that allegedly had not been able to be achieved before. Again, as with Eikelboom, there is no discussion in Peterson that suggests that either the color positive or color negative image is processed in order to facilitate comparison of the images.

This is expected considering how Peterson acquires the images. More specifically, Peterson takes a single color positive image, and from that image creates a color negative by inversion. In other words, Peterson creates its second image directly from its first image. It follows therefore that Peterson does not require additional processing, for example, to align the images because the images are duplicates of one another, albeit one a negative of the other. Therefore, by teaching the use of duplicate images instead of distinct images that require processing contemplated by the presently claimed embodiment, Peterson teaches away from such processing and subsequent comparison.

Accordingly, applicants respectfully request withdrawal of the rejection of claims 1-23 over Eikelboom in view of Peterson.

CONCLUSION

In view of the foregoing, applicants respectfully submit that the claims are allowable and that the present application is in condition for allowance. Reconsideration of the application and an early Notice of Allowance are respectfully requested. In the event that the Examiner cannot allow the present application for any reason, the Examiner is encouraged to contact the undersigned attorney, Vincent J. Roccia at (215) 564-8946, to discuss resolution of any remaining issues.

Date: April 11, 2005

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